

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOMINIC FLORIO,

Petitioner,

-against-

ANDREW M. CUOMO, Attorney General,
State of New York,

Respondent.
----- x

10 Civ. 0998 (SHS) (AJP)

ORDER TO SHOW CAUSE

ANDREW J. PECK, United States Magistrate Judge:

The First Department affirmed petitioner Florio's conviction in September 2002, and the New York Court of Appeals denied leave to appeal in December 2002 and reconsideration on August 11, 2003. See People v. Florio, 297 A.D. 2d 612, 747 N.Y.S.2d 365 (1st Dep't), appeal denied, 99 N.Y.2d 558, 754 N.Y.S.2d 210 (2002), on reconsideration, 100 N.Y.2d 594, 766 N.Y.S.2d 169 (2003).

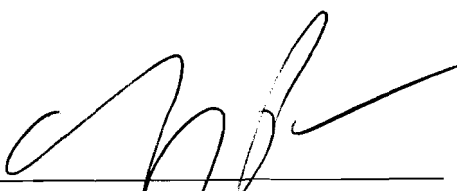
It appears from the petition (Dkt. No. 1) that Florio then brought his C.P.L. § 440 motion in April 2008.

However, the filing of a C.P.L. § 440 motion does not re-start the AEDPA's one year limitation period, which appears to have expired in this case in November 2004 (one year after the time to petition for certiorari).

Mr. Florio should show cause, in writing, by April 9, 2010, why his petition should not be dismissed as time barred under the AEDPA.

SO ORDERED.

Dated: New York, New York
March 10, 2010



Andrew J. Peck
United States Magistrate Judge

Copies to: Dominic Florio
Andrew M. Cuomo, Attorney General of the State of New York
Cyrus R. Vance, Jr., District Attorney, New York County
Judge Sidney H. Stein